

SAMPLE

BETA SOFTWARE TESTING AGREEMENT

THIS AGREEMENT is made the

BETWEEN:

- (1) <<Name of the Developer>> of <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Developer")
- (2) <<Name of the Tester>> of <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Tester")

WHEREAS:

- (1) The Developer is creating a software product ("the Software"), has completed initial testing and development of the Software.
- (2) The Tester has agreed to test the Software for the Developer, subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless otherwise requires, the following expressions have the following meanings:

"Beta Test Period"

the period during which the Software will be tested by the Tester in accordance with Clause 5 of this Agreement;

"Confidential Information"

information relating to the Software and its development, [and] reports [and data generated by the Software];

"Employee"

any person employed by the Tester unless specifically stated otherwise;

"Licence"

the licence granted by the Developer to the Tester in accordance with Clause 3 of this Agreement;

"Output Data"

the data or other output produced by the front end of the Software;

"Premises"

the business premises located at <<Address>>

- 1.2 Unless the context clearly indicates otherwise, any reference in this Agreement to:

- 1.2.1 "writing", and any other form of communication, includes a reference to any communication in electronic or facsimile transmission or any other form of communication;

- 1.2.2 a statute or regulation, is a reference to that statute or regulation in force at the relevant time;

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- 1.2.3 "this Agreement and each of the Schedules attached to this Agreement and each of the Schedules attached to this Agreement at the relevant time;
- 1.2.4 a Schedule in this Agreement;
- 1.2.5 a Clause or paragraph of this Agreement (other than a Clause or paragraph of the relevant Schedule; and
- 1.2.6 a "Party" or "parties" to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
2. **Nature of the Agreement**
- 2.6 The Developer requires the Tester to use the Software in a business environment by users that would use the Software as a product in the course of their employment.
- 2.7 The Tester has agreed to allow the Developer to use the Software at their Premises by Employees that would use the Software as a product in the course of their employment.
- 2.8 The Tester shall assign the Developer the right to use the Software by Employees with the appropriate skills, qualifications and experience to test and evaluate the functionality, content and quality of the Software. The Tester shall put in place suitable measures to ensure that the Developer can collect data from those Employees.
3. **Licence and Use of Software**
- 3.9 The Developer grants the Tester a non-exclusive licence to use the Software subject to the conditions of this Agreement and as described herein.
- 3.10 The Tester shall use the Software for internal business purposes only.
- 3.11 The Tester shall not, without the prior written consent of the Developer, use the Software in any other manner.
- 3.12 The Tester shall not, without the prior written consent of the Developer, copy, modify, or otherwise use the software or installation media for any other purpose.
- 3.13 The Licence shall not be transferred to any other software, programs or materials of the Developer or its affiliates without the prior written consent of the Developer.
- 3.14 The Tester acknowledges that the Software is provided to the Tester for use in accordance with the terms of this Agreement and not further or otherwise.
- 3.15 The Tester shall not, without the prior written consent of the Developer, commit any act which may affect the Developer's rights, title or interest in the Software.
4. **Disclaimer of Warranties**
- 4.16 The Software is provided "as is" and is released solely for the

	purposes of testing the Software as a finished product and not as a work in progress. The Software is provided "as is".		acknowledges that the Software is not a finished product and not as a work in progress. The Software is provided "as is".
4.17	The Developer makes no warranty, express or implied, that the Software is suitable for use in a particular environment or for a particular purpose, or that it will produce accurate data or results for the Tester's business.		or warranty that the Software is suitable for use in a particular environment or for a particular purpose, or that it will produce accurate data or results for the Tester's business.
4.18	The Tester acknowledges that the use of the Software may lead to data loss or other damage to the Tester's systems or the data held thereon.		The Software may lead to data loss or other damage to the Tester's systems or the data held thereon.
4.19	The Tester acknowledges that the use of the Software is at its own risk.		The Software is at its own risk.
4.20	The Developer shall not be liable for any direct, indirect, consequential or incidental loss or damage, or for any claims arising from or relating to the Software.		The Developer shall not be liable for any direct, indirect, consequential or incidental loss or damage, or for any claims arising from or relating to the Software.
4.21	[Nothing in this Agreement shall limit the Developer's liability for death or personal injury arising from its negligence.]		[Nothing in this Agreement shall limit the Developer's liability for death or personal injury arising from its negligence.]
5.	Beta Test Period		
5.22	[The Beta Test Period shall be for a period of <<insert date>> OR [The Beta Test Period shall be for a period of <<insert period>> from <<e.g. the date of completion of the Software>> until terminated in accordance with Clause 10.]		[The Beta Test Period shall be for a period of <<insert date>> and continue until terminated in accordance with Clause 10.] OR [The Beta Test Period shall be for a period of <<insert period>> from <<e.g. the date of completion of the Software>> until terminated in accordance with Clause 10.]
5.23	The Beta Test Period shall be for the period set out in sub-Clause 5.1.		The Beta Test Period shall be for the period set out in sub-Clause 5.1.
5.24	[At the end of the Beta Test Period the Software shall automatically cease to function.]		[At the end of the Beta Test Period the Software shall automatically cease to function.]
5.25	At the end of the Beta Test Period the Tester shall remove all copies of the Software from its control and must return to the Developer:		At the end of the Beta Test Period the Tester shall remove all copies of the Software from its control and must return to the Developer:
5.25.7	All copies of the Software on any physical media;		All copies of the Software on any physical media;
5.25.8	All documentation relating to the Software to the general public (including the Beta test);		All documentation relating to the Software to the general public (including the Beta test);
5.25.9	All reports and documentation created by the Developer or the Tester relating to the Software;		All reports and documentation created by the Developer or the Tester relating to the Software;
5.25.10	All equipment used for the testing of the Software under Clause 6.		All equipment used for the testing of the Software under Clause 6.
5.26	At the end of the Beta Test Period the Tester may [not] retain any and all Output Data produced during the Beta Test Period.		At the end of the Beta Test Period the Tester may [not] retain any and all Output Data produced during the Beta Test Period.
6.	Loan of Equipment		
6.27	The Developer shall provide the Tester with the equipment required for the testing of the Software on a loan basis.		The Developer shall provide the Tester with the equipment required for the testing of the Software on a loan basis.
6.28	No fees shall be payable by the Tester for the loan of the equipment.		No fees shall be payable by the Tester for the loan of the equipment.
6.29	The Developer shall insure the equipment for the following:		The Developer shall insure the equipment for the following:

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6.29.11 Damage by
6.29.12 Theft, provided
Premises.

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or any other purposes.

7. Software Updates

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of any updates.

te the time and date of installation

8. Reports and Feedback

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are and shall use such feedback to
the Software in the format set out

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Developer may contact the Tester or
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9. **Confidentiality and Non-Disclosure**

- 9.42 The Tester undertakes to keep Confidential Information authorised in writing by the Tester, at all times during the Beta Test Period and [for <<i>indefinite</i>] after its conclusion:
- 9.42.16 keep confidential the Confidential Information;
 - 9.42.17 not disclose Confidential Information to any other party;
 - 9.42.18 not use any Confidential Information for any purpose other than as contemplated by the terms of this Agreement;
 - 9.42.19 not make any Confidential Information available in any way or part with possession of Confidential Information;
 - 9.42.20 ensure that any disclosure of Confidential Information by officers, employees, agents or advisers done on behalf of the Tester, would be a breach of the provisions of Clause 9.1.4 above.
- 9.43 The Tester may:
- 9.43.21 disclose Confidential Information to:
 - 9.43.21.1 the Tester or its directors, officers or suppliers;
 - 9.43.21.2 any government authority, court or other authority or regulatory body;
 - 9.43.21.3 any other person, provided that such person is a director, officer or employee of the Tester or its subsidiaries or officers or any of the foregoing;
 - 9.43.22 disclose Confidential Information to such extent as may be necessary for the purposes contemplated by this Agreement, provided that the Tester first obtains the prior written consent of the Confidential Information owner (or any such body authorised by the Confidential Information owner) submitting to the question, as to whether the Confidential Information should be disclosed for the purposes for which it is required.
 - 9.43.23 use any Confidential Information for any purpose, or disclose it to any other person, provided that it is at the date of this Agreement, or at any time thereafter, not in the public domain, public knowledge through no fault of the Tester, and that in doing so the Tester does not disclose any Confidential Information which is not public knowledge.
- 9.44 Prior to the commencement of the Beta Test, the Tester shall obtain written undertakings from all its employees to comply with the provisions of this Clause 9 in relation to Confidential Information as binding as those contained herein.
- 9.45 The provisions of this Clause 9 shall remain in force in accordance with their terms, notwithstanding the expiry of this Agreement for any reason.

10. Termination

10.46 The Developer shall terminate this Agreement prior to the end of the Beta Test Period if the Tester:

10.46.23 has committed a material breach of this Agreement, unless in which case the right to terminate the Agreement the Tester has failed to remedy the breach within 30 days of written notice to do so; or

10.46.24 goes into liquidation either voluntary or involuntary, or is the subject of a compulsory arrangement or reconstruction or a receiver is appointed in respect of the whole or substantially the whole of the assets of the Tester.

10.47 Any and all obligations of the Parties shall survive termination of this Agreement either expressly or by their nature and shall continue beyond the termination or expiration of this Agreement.

10.48 The provisions of Article 5.5 shall apply in the event of termination under this Article.

11. Notices

11.49 All notices under this Agreement shall be in writing.

11.50 Notices shall be deemed to have been given:

11.50.25 when delivered by hand (including by courier) to the recipient; or

11.50.26 when delivered by fax or e-mail and a successful transmission is generated; or

11.50.27 on the third business day following mailing, if mailed by national ordinary mail;

11.50.28 on the third business day following mailing, if mailed by airmail, provided that the mailing is prepaid.

in each case addressed to the recipient address, e-mail address, or facsimile number notified to the Developer in writing.

12. Relationship of Parties

Nothing in this Agreement shall be construed to create, a partnership, the relationship of principal and agent, or a partnership between the Developer and the Tester.

13. Assignment

The Tester may not assign, transfer, or in any other manner make over to any third party the benefit of this Agreement.

14. Severance

The Parties agree that, if any provision of this Agreement is found to be invalid or otherwise unenforceable, that / those provisions shall nevertheless be enforceable to the maximum extent possible.

provisions shall be deemed to be the entire agreement and the remainder of this Agreement shall be null and void.

remainder of this Agreement. The remainder of this Agreement shall be null and void.

15. Entire Agreement

15.51 This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement. No Party shall be entitled to rely on any agreement, understanding or arrangement not set forth in this Agreement, save for any representation made by the Parties.

forth the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement. No Party shall be entitled to rely on any agreement, understanding or arrangement not set forth in this Agreement, save for any representation made by the Parties.

15.52 Unless otherwise provided in this Agreement, this Agreement may be signed by both of the Parties.

elsewhere in this Agreement, this Agreement may be signed by both of the Parties.

16. Law and Jurisdiction

16.53 This Agreement (including any amendments thereto) shall be governed by, and construed in accordance with, the law of England and Wales.

ual matters and obligations arising from this Agreement shall be governed by, and construed in accordance with, the law of England and Wales.

16.54 Any dispute, controversy or claim between the Parties relating to this Agreement (including any amendments thereto) shall be referred to and determined by the courts of England and Wales.

claim between the Parties relating to this Agreement (including any amendments thereto) shall be referred to and determined by the courts of England and Wales.

IN WITNESS WHEREOF this Agreement has been executed and signed before written

executed the day and year first

SIGNED by

<<Name and Title of person signing for and on behalf of <<Developer's Name>>>

In the presence of
<<Name & Address of Witness>>

SIGNED by

<<Name and Title of person signing for and on behalf of <<Tester's Name>>>

In the presence of
<<Name & Address of Witness>>

Beta Testing Report

<<Insert Details>>

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